

July 16, 2007

Branch Chief
Regulations and Paperwork Management Branch
U.S. Department of Agriculture
300 7th Street, SW
Seventh Floor
Washington, DC 20024

Re: Proposed rule regarding Streamlining of the Section 523 Mutual and Self-Help Housing Program, RIN 0575-AC20

Community Frameworks is a 501 c(3) nonprofit serving Washington, Oregon, Idaho, and Montana. We provide HUD SHOP funding to self-help homeownership programs in the four states mentioned. Since 1996 we have received \$21,087,487 in HUD SHOP dollars to disperse amongst our SHOP affiliates, the majority of which are USDA RD 523 grantees. We have on staff Alan Trunnell, President of the National Rural Self Help Housing Association. He has a strong USDA RD 523, mortgage banking, and single family construction background. During his five years at Kitsap County Consolidated Housing Authority that organization became the largest 523 grantee in the Pacific Northwest. Although our initial 523 grant is pending we believe we have ample experience to comment on the proposed regulation.

We appreciate the significant effort it must take to publish a rule along the lines of the proposed 3551. While we applaud USDA RD for attempting to improve the Mutual Self Help program, we feel the language in the proposed rule needs significant change to accomplish the intent specified by RD in the proposal.

We are very concerned that this proposal attempts to move funding away from pipeline funding appropriate for ongoing programs to an individual project funding model, that is more similar to and more suitable for individual multi-family construction projects. This would have a severe impact on grantees across the nation who must build pipelines and maintain programmatic infrastructure if they are to operate successfully and cost effectively.

SUMMARY section of proposed rule

The proposed rule does not meet its stated purpose of “.....*this action is taken to reduce regulations, improve customer service and enhance efficiency, flexibility, and effectiveness in managing the program*” as will be evidenced by the comments below.

CLASSIFICATION section of proposed rule

The proposed reg does not meet **Executive Order 12866** as it is inconsistent with the President's 5 Star Commitment to homeownership priorities as addressed to the nation in 2002 and represented by RD's commitment to double self help by the year 2010. Because the lack of certainty and continuity in the NOFA model proposed, current grantees will be unable to make the forward commitments necessary to hire/maintain required staff, purchase land, and qualify families.

EO 12866 also requires the agency to seek the involvement of those it will benefit and burden. We do not believe this order was met as we are unaware of any formal grantee involvement other than a one session meeting with a task force of RD's choosing approximately two years ago.

EXECUTIVE ORDER 13132 section of proposed rule

The proposed reg is unlikely to meet this order as the 523 leverage component of the scoring criteria will have an **impact on States**. Funding suitable to leverage 523 dollars is extremely difficult to obtain. We believe the largest and most consistent source of leverage dollars currently being used comes from legislated funds in less than a handful of states. Grantees whose States do not currently fund admin for self-help will turn to their States to provide these dollars so that they may compete on a level playing field with applicants in States that already offer 523 leverage.

REGULATORY FLEXIBILITY ACT section of proposed rule

The proposed reg does not meet this Act as there will be significant economic impact on a substantial number of small entities due to the reg requiring grantees to be multi-funded; many successful grantees are single program operatives.

3551.2 Purpose

If the 523 grant award process becomes a NOFA competition, it is not appropriate to structure USDA funded TA to applicants, provide PreDevelopment grants or incorporate the TA providers in the scoring of applications. This would create unfair advantage to some applicants and disadvantage others.

In any case, Technical and Management Assistance would be more effective if it were focused on increasing grantee organizational capacity and on program and project analysis with corrective TA and training when deficiencies are found. This should be structured as a partnership between the TA provider and USDA with the purpose being to assure successful and timely completion of grant obligations. While the objective would be to facilitate success, should grantees be resistant to help or unable to cure problems, then USDA should consider that grantee high risk and such status could affect grant renewals or scoring in a NOFA process.

3551.7 Construction Requirements

What constitutes 50% of a 100% of the labor to complete a modest house. Is it 50% of the hours of labor required, 50% of the tasks required, and 50% of each of the tasks required? These questions should be answered prior to requesting further comment.

3551.10 Definitions

Equivalent units are the best measurement of grantee production and should not be minimized nor replaced with whole unit production requirements.

Equivalent value of a modest house should include *"as determined by an independent appraiser"*.

Members' Agreement has not and should not be an RD form; this is a contract between the family and the grantee.

3551.51 Eligibility

RD should not determine the makeup of an entity's board. It is unclear as to what this might solve and it will have significant impact on existing and new grantees that will be unable or unwilling to have RD determine their board makeup.

Comments such as "similar projects" "similar experience" are vague and subject to wide interpretation and do not meet the intent of the proposed rule expressed as "*provides clarity*".

Small entities may have no Commercial Rating and the language "*acceptable rating*" is too vague.

Requiring documentation from the applying organization that they have experienced staff members who have successfully completed similar projects or have secured a consultant with similar experience who will assist and train appropriate key staff members of the organization is vague and subject to wide interpretation that could result in different procedures in different states. Therefore this section does not provide the clarity sought within this proposed reg. As the two largest components of the MSH single family production line are mortgage and construction (and for some development would be included) this section's language could include specificity such as the number of years (and or units) of single family mortgage and single family construction experience needed.

Requiring participating families to have at least 10 percent equity may not be feasible in some markets. There are areas where because of an imbalance between construction costs and home valuations, there cannot be 10% equity provided even by the most efficient program. However, due to low housing inventory and/or unaffordable housing getting a good home with only minimal equity is still the best and only option for the MSH buyer. This most often will occur with land trusts and tribal lands, but is also likely elsewhere in certain types of markets.

Equity achieved can be as much a measure of the market place as it is family or grantee performance. A new reg should allow for an RD audit of the circumstances that led to less than 10% equity before determining that the grantee did not meet the 10% equity threshold and is therefore sanctioned.

3551.54 TA Grant Amounts

Grant amounts should not be based upon the proposed number of units to be completed. An equal number of Equivalent Units should be included in the language and all EU's carried over into the next grant shall be completed.

TA at 15% is vague and is therefore subject to wide interpretation. The value of a modest home should include; *as determined by an independent appraiser*.

3551.55 Application submission and processing,

The NOFA process presents a myriad of problems. The purpose of the NOFA appears to be to improve the strength of grantees (eliminate non performing grantees) via a scoring model, matching available funding to awards, and reducing cost to the government via a competitive bidding process.

The proposed rule does not recognize that the single family new construction sweat equity pipeline production model has a number of components unique unto itself. Staff to process mortgage loans and provide construction site supervision cannot functionally be contracted from outside sources for two year project funding periods. This skill and experience are specific to this program and do not cross over well from other programs.

As a result, once committed to the single family MSH construction program model, a program must commit to hiring staff and to maintaining a pipeline of land and families on a continuing basis, not intermittently. Otherwise costs would sky rocket as grantees would be forced to wait for an award before purchasing land (eliminates opportunity to take advantage of right place right time purchases), forced to eliminate raw land purchases as there will not be time to develop and meet grant goals, (land supply is further diminished, raising costs), and a grantee will pay above market wages for mortgage and construction staff that will be willing to work on a two year contract.

Situations like that which occurred in 2006 where funding available did not match funding needed was avoidable as RD has the tools to project renewals and limit new applications well in advance. A NOFA process is not needed to remedy funding for renewals.

No numbers have been provided to quantify the success or lack thereof in new grantee performance and continuing performance of high risk grantees. If a reason driving the change to the NOFA process is to reduce or eliminate problems with low-capacity new grantees or to make it easier not to renew grants to high risk programs, there are ways to address those problems directly through technical assistance and enforcement of performance standards. Fixing these problems should not require conversion to a process that will be detrimental to the majority who are high performing grantees.

It does not appear that the NOFA process will lead to RD staff reductions as proposed. We are concerned that the NOFA process will over burden offices with applications at one time versus the current practice of just-in-time applications; we fear RD staff will be considerably short of capacity to handle the work load.

3551.55 Scoring and Ranking

Reducing TA via a competitive process does not address disparity between high cost and low cost markets, does not address the differing 502 loan processing services offered grantees by RD offices across the country, does not address real cost cutting efficiencies that are available to RD and grantees, and as a result will eliminate many programs that provide homeownership at a reasonable cost to the government at a price tag below that which those we serve could buy a comparable home.

There is too much focus on definitions that do not address a structure that would help insure new applicants have both capacity and experience. There is no allowance for grantees that are not performing on the numbers, but provide homeownership at a cost lower than their market place, such as high mission driven entities serving hard to serve underserved, extremely poor, and difficult populations.

A number of performing, long existing entities that solely operate a MSH program will be negatively impacted by requirement to be multi-funded.

Because grant closeouts are likely to take place after a grantee (to maintain pipeline activity) has submitted their NOFA application, no grant closeout rating will be available to the scoring committee. This negates a significant reason for having a competitive NOFA process for renewing grantees.

In many states including states with high producing grantees it has been an accepted process to allow grantees to close out grants meeting a measurement known as Equivalent Units (EUs) which measure production based upon a percentage of completion, i.e. if your grant required 32 homes to be completed and the grantee had 24 homes completed and 10 homes 80% completed this met the grant unit completions goal. In the proposed reg this will be extremely difficult for small grantees. For example a grant for 10 units only allows one home to be incomplete, but homes in the MSH model are completed three or four at a time. This requirement will slow production, impact small grantees, which is contrary to the intent of the proposed rule.

Requiring all homes to be completed in the next grant cycle is extremely important and should support EU count as an acceptable grant closeout measurement.

The 15% TA calculation as proposed results in TA awards differing considerably between high cost and low cost markets. Under the proposed rule points are awarded for lower TA costs potentially eliminating some grantees in high cost areas. The proposed reg requests applicants to document their cost circumstances to overcome the disparity between high and low cost areas. This language is too vague, subject to the ability of the grant writer, and should be removed.

The majority of grantees will be unable to include contractors at the final walk through of the homes. Grantees requiring contractors to do so will risk contractors' willingness to bid on the project. If RD wants the families to pay for the additional contractor time, the contractor would be more willing to participate.

3551.101 Provision of TA

Counseling requirements in the proposed reg mirror those in the current reg. Recently requiring a certified homebuyer course was a welcome addition (many grantees already required this). Grantees under the existing reg provide credit, budget, team building, team problem solving, pre-construction, and in many instances pre-occupancy counseling, along with site safety and construction technique. This is an extremely successful program as designed and demonstrated by delinquencies lower than other 502 programs and FHA.

Requiring participating families to participate in determining their contracting and construction material cost estimates will increase the cost of construction for a significant number of families. Many grantees, especially the larger producers, contract for materials and services well in advance of family meetings to maximize volume discounts that are then passed on to the families. The proposed reg does not address nor allow this savings to the families and the 502 loan pool.

3551.153 Grantee performance

Technical and Management Assistance contracts as proposed do not, but should include assisting grantees with solutions when a grantee is headed down a high risk path. There are several types/levels of trouble grantees might find themselves in that can lead to cost overruns including:

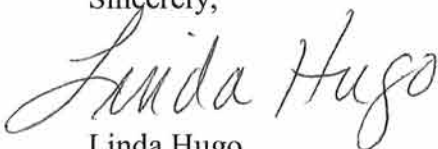
- RD state office imposed caps on Technical Assistance award below cost of doing business, which otherwise meets 523 guidelines
- RD state office imposed construction models that add cost to projects
- Having ample credit worthy families
- RD state office not supporting grantee/building group member contract
- Poor administration of program by grantee and/or RD state office due to:
 - States' unfamiliarity with the idiosyncrasies of administering a program
 - Grantee was awarded without thorough analysis of capacity and experience
- Acts outside the control of the grantee
- RD national changing processes and procedures on short notice ex: (May 9, 2006 AN changing funding parameters just prior to pooling although funding forecasting could easily have been done 12 months prior)
- Market forces that increase building costs beyond projections, often because forecasts were required so far in advance.
- Grantee lot sales to building group members that are below cost of acquisition and development due to RD imposed formula which in many cases is based on lack of comparable lot sales in rural areas restricting the lot price, even though the "as to be completed" appraisal provides required equity and savings to the family.
- Jurisdictional hurdles causing slow down of land development

The proposed reg does little to address these issues with any clarity. Experienced grantees have proven themselves along the way and will need RD to participate in solutions not be advised by RD of what they are not doing correctly as proposed. Another big step toward improving performance and strength of grantees should start with making awards only to new applicants that have the highest probability of succeeding; those that have been well-prepared through technical assistance and consultants or have relevant experience and track record.

In summary, the current reg has clear goal criteria, allows for accountability, and has guided the production of a significant number of units. Problems RD perceives it is trying to correct are solvable by improved enforcement of the current reg.

We would advise working with a wide cross section of 523 grantees across the nation to address execution of the current regulation or to help with the language of a second draft of the proposed regulation to help enhance production and improve cost effectiveness.

Sincerely,



Linda Hugo
Executive Director